

March 24, 1999

L-99-4

TO : Bobby V. Ferguson
Director of Programs

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Waiver of Internal Rules - Power of Attorney

We have received a suggestion that the internal rules of the RRB be modified to accept a power of attorney from an individual acting on the employee=s behalf to change the employee=s address or initiate direct deposit when the individual with the power of attorney has a joint account with the annuitant. Section 266.2 of the Board=s regulations permits the Board to Ain its discretion, validly recognize actions by and conduct transactions with others acting on behalf of the individual found by the Board to be a minor or to be unable to manage his or her own affairs, if the Board finds such actions or transactions to be in the best interest of such individual@.

This regulation interprets section 12(a) of the Railroad Retirement Act which provides in part:

*** That regardless of the legal competency or incompetency of an individual entitled to a benefit administered by the Board, the Board may, if it finds the interest of such individual to be served thereby, recognize actions by, and conduct transactions with, and make payments to, such individual, or recognize actions by, and conduct transactions with, and make payments to, a relative or some other person for such individual=s use and benefit.

The receipt of a power of attorney granted by the annuitant gives rise to a rebuttable presumption that the annuitant may no longer be able to handle his or her own affairs. Thus, in our view, for the limited purposes of change of address or initiation of direct deposit to a joint account, the Board may recognize a power of attorney executed by an annuitant prior to a finding by the Board that the annuitant is not capable of handling his or her own affairs.¹ Accordingly, we believe that our internal rules could be revised to accomplish the change requested. Regardless of your action on this matter, upon receipt of a power of attorney, the field should determine if appointment of a representative payee would be in order.

¹The Board in the past has recognized a power of attorney for purposes of prosecuting a claim when there was no question that the claimant or annuitant was competent. See Form G-142.

Please advise me whether or not you intend to make the revision requested. I will then advise the employee.